

TENTATIVE RULINGS for CIVIL LAW and MOTION

January 6, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: Roscoe-Moses v. Washington Unified School District
Case No. CV CV 09-2383

Hearing Date: January 6, 2010 Department Fifteen 9:00 a.m.

Demurrer to the complaint: The demurrer to the second cause of action is **OVERRULED**. A complaint is not subject to a general demurrer when it states any valid claim entitling the plaintiff to relief. The second cause of action states a race discrimination claim based on acts or omissions that occurred in 2008.

The unopposed demurrer to the fifth cause of action based on failure to allege compliance or excuse from compliance with the claims-presentation requirement of the Government Claims Act is **SUSTAINED WITH LEAVE TO AMEND**. (Govt. Code, §§ 905 and 945.4.)

The unopposed demurrer to the fifth cause of action based on failure to exhaust judicial remedies is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 1094.5; Educ. Code, § 44949.)

The demurrer to the fifth cause of action based on failure to exhaust administrative remedies is **OVERRULED**. Education Code section 44949, subdivision (b) does not require an employee to request a hearing to determine if there is cause for not reemploying him or her.

The demurrer to the fifth cause of action on the ground that Education Code section 44955 does not create a private right of action is **OVERRULED**. The fifth cause of action is a *Tameny* claim. Defendant does not cite authority for the proposition that a *Tameny* claim must be based on a statute that creates a private right of action.

The unopposed demurrer to the sixth cause of action based on Government Code section 815 is **SUSTAINED WITHOUT LEAVE TO AMEND**. (*Miklosy v. The Regents of the Univ. of Calif.* (2008) 44 Cal.4th 876.)

Motion to Strike: The unopposed motion to strike references to punitive damages in the complaint is **GRANTED WITHOUT LEAVE TO AMEND**. (Govt. Code, § 818.)

The motion to strike as to paragraphs 24 and 32 of the complaint is **DENIED**.

The motion to strike paragraphs 26.a, 26.b and 26.c and the last sentence of paragraph 34 of the complaint is **GRANTED WITH LEAVE TO AMEND**. (Govt. Code, § 12960, subd. (d).)

The complaint does not allege sufficient facts to show a continuing violation. For example, there are no facts showing that alleged unlawful acts occurred with reasonable frequency from 2006 through 2008. (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798.) The motion to strike the reference to a layoff in paragraph 34 of the complaint is **DENIED** because this allegation can reasonably be interpreted to refer to the end of the plaintiff's employment in July, 2008. (Exhibit C to the complaint.)

Plaintiff shall file an amended complaint, if any, **by no later than January 22, 2010**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.